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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/762,809	01/22/2004	Wolfgang Dinkelacker	K0004/7004	5393		
64967	64967 7590 11/14/2006		EXAMINER			
LAW OFFICES OF PAUL E. KUDIRKA 40 BROAD STREET			PRONE, CHRI	PRONE, CHRISTOPHER D		
SUITE 300	TREET		ART UNIT	PAPER NUMBER		
BOSTON, M	IA 02109		3738			

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary The MAILING DATE of this communication appears on the cover sheet with the correspondence address - Period for Reply AS HORTEMED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Settlement of this may be svaled used the provisions of 27 CFR 1.136(a) in over the however, any sep be limitly field after St (6) MONTHS from the making date of this communication. For this provision is the provision of 27 CFR 1.136(a) in over the however, was sep to be inselled to the communication. In the provision of the provision of 27 CFR 1.136(b) and apply and will exist (6) MONTHS from the making date of this communication, even if smelly field. They reduce any sarred paper time displanes. See 37 CFR 1.734(b) will be stated to the provision of the provision	· · · · ·		Applicat	ion No.	Applicant(s)				
Christopher D. Prone 3738			10/762,8	09	DINKELACKER, WOLFGANG				
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2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are objected to. 7) Claim(s) is/are objected to. 8) Claim(s) is/are objected to. 8) Claim(s) is/are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). *See the attached detailed Office action for a list of the certified copies not received.	Status								
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U.S. Patent and Trademark Office PTOL-326 (Rev. 08-06) Application/Control Number: 10/762,809

Art Unit: 3738

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-8, drawn to a bone implant for a bony substance, classified in class 623, subclass 16.11.
- II. Claims 9-24, drawn to a method of producing a bone implant that is compatible with bone cells, classified in class 128, subclass 898.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially different process wherein the implant surface is not pretreated prior to it's reshaping.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

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This application contains claims directed to the following patentably distinct species:

Species 1 shown in figure 3

Species 2 shown in figure 5

Species 3 shown in figure 7

Species 4 shown in figure 8

The species are independent or distinct because they comprise distinct structures that will require separate searches in the art.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are considered generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

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A telephone call was made to Paul E. Kudirka on 11/9/06 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103 (a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Prone whose telephone number is (571) 272-6085. The examiner can normally be reached on Monday Through Fri 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

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